

Department of Marine Resources

NOTICE OF AGENCY RULE-MAKING PROPOSAL

RULE TITLE OR SUBJECT: Chapter 11.10(1)(H)(10) Closed Areas, Whiting Bay and Denny's Bay Area and technical amendments:
Chapter 11.19(1)(E) - add reference to section (H)(10)
Chapter 26.19 - add reference to Chapter 11.10(1)(H)(10)
Chapter 11.20(1) – remove graphic for technical cleanup

CONCISE SUMMARY: The proposed amendment would establish a tenth scallop and one urchin conservation closure in Whiting Bay and Denny's Bay (inner Cobscook Bay area). The proposed closure would sunset after 2 seasons, May 1, 2011. Technical changes in Chapters 11 and 26 are also proposed: references to the proposed closure and removal of a chart at the end of Chapter 11.

STATUTORY AUTHORITY: 12 M.R.S.A. §6171

PUBLIC HEARINGS*: Mon., July 20, 2009, 6:00pm, Yarmouth Town Hall, Community Rm, 200 Main St, Yarmouth

Tue., July 21, 2009, 6:00pm, UMM, Science Lecture Hall (Rm 102), 9 O'Brien Ave., Machias

Thur., July 23, 2009, 6:00pm, Ellsworth City Hall (Auditorium), One City Hall Plaza, Ellsworth

Fri., July 24, 2009, 6:00pm, State Ferry Terminal, Conf. Rm, 517A Maine St., Rockland

**Public hearings for two proposed rules will be held starting with the proposed season and closed areas, followed by the proposed Whiting and Denny's Bays closure rules. The second hearing will be held immediately upon the conclusion of the previous hearing. See separate rulemaking notice for the rule not listed in this notice.*

DEADLINE FOR COMMENTS: August 3, 2009

To ensure consideration, comments must include your name and the organization you represent, if any. Please be aware that any risk of non-delivery associated with submissions by fax or e-mail is on the sender.

AGENCY CONTACT PERSONS: Togue Brawn (207-624-6558)

Mail written comments to: Department of Marine Resources, attn: L. Churchill
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Hearing facilities: If you require accommodations due to disability, please contact Amanda Beckwith, at (207) 287-7578.

Additional information:

Maine scallop landings have declined precipitously from a peak of nearly 4 million pounds in 1980-1981 to less than a half million pounds each year since 2001. DMR began a dredge-based fishery-independent survey of the state scallop resource in 2002. Survey results from 2005 to 2008 indicate a significant decline in scallop abundance in most areas. 2006 and 2007 surveys indicated Cobscook Bay had by far the highest scallop density in the state; it is the only area exhibiting relatively high scallop production in recent years. Because of this relative abundance, the fishery in Cobscook Bay has been intensive with over 100 boats participating in some years. There is concern that this level of fishing effort will result in the depletion of the scallop resource.

In December of 2007, most boats in Cobscook Bay caught their 135 lb daily limit throughout first three weeks of the fishery, with catches dropping off sharply by January. In December of 2008 the decline came far more rapidly; before the end of the first week fewer than half the boats were reaching their limit. By early December 2008, Marine Patrol and fishermen interviews indicated the fishing was so poor many fishermen had "given up" fishing in Cobscook Bay. Anecdotal information suggested much of what remained in the Bay was sublegal.

Concern that continued fishing pressure would threaten potential recruitment prompted the Commissioner to enact six emergency closures (including all of Cobscook Bay) for the second half of the 2008/2009 scallop season. These emergency closures were enacted due to the risk of unusual damage and expired on May 1, 2009.

The Department announced in January 2009 that the 2009/2010 scallop season would not be opened unless substantial conservation closures of at least three years were established. Six public meetings were held in April to solicit closure recommendations from area fishermen, and these recommendations were shared with the SAC. During this process, the Commissioner announced that because of the unique properties of Cobscook Bay, an alternate approach to closures was warranted in that area. A large area of productive bottom should be closed to allow sublegal scallops to grow and reproduce prior to harvest. This would follow the path of a two-year "rotational closure" as opposed to the three-year "conservation closures" recommended in the rest of the state. The statewide conservation closures are being pursued in a separate concurrent rulemaking.

*This proposal closes all of Whiting and Denny's Bay to the harvest of both **urchins and scallops** for two years. The chair of the Cobscook Bay Fishermen's Association presented this proposal to the Scallop Advisory Council at their May 21 meeting. There are several reasons why this closure is being proposed:*

- This area contains many small scallops that would be more valuable if they were allowed to grow to a greater size prior to harvest.*
- Allowing this area to rest without significant bottom disturbance should boost reproductive success and therefore provide benefits outside the closure (via spillover effect).*
- Urchin fishing should also be prohibited. Given the geographic layout of the area and the abundance of scallops, it would be easy for urchin fishermen to illegally take scallops and evade detection by dumping contraband scallops should they see Marine Patrol approach.*
- Closing to urchin fishing should also provide benefits to the urchin resource within the area, and may provide "spillover effects" for the rest of the Bay.*

*This closure will last for **two years**, during which time the Department, the Scallop Advisory Council and the Sea Urchin Zone Council will work to implement a pilot program in area management. This program will involve the establishment of management to prevent the depletion of the scallop and urchin resource in the area upon reopening.*

This closure proposal differs from the concurrent proposal to establish conservation closures in the following ways:

- It would last for two years as opposed to three.*
- It would close the area to the harvest of both urchins and scallops.*
- It is being pursued as part of a pilot program in area management.*

For these reasons, the hearings for this proposed closure will be held immediately following the hearings for the nine conservation closures.

Proposed rulemaking – see underlined or ~~deleted~~ text below:

Chapter 11 Scallops

11.10 Atlantic Sea Scallops - Limitations

1. Size, Harvesting and Conservation Zone Regulations
 - H. Closed Areas

It shall be unlawful to fish for or take scallops by any method within any of the following areas.

Transiting exception:

Any vessel possessing scallops onboard, may transit these closed areas, only if the vessel has all fishing gear (dredges, drags) securely stowed. Securely stowed shall mean the main wire shall not be shackled or connected to the dredges or drags, and the towing swivel will be at block or on the winch.

(10) Whiting Bay and Denny's Bay Area:

It shall be unlawful to fish for or take scallops and or urchins west of a line starting at the western end of Mahar Point, Pembroke, due south to the nearest point of land on Crow Neck, Trescott, to include all of Whiting Bay and Denny's Bay. This section Chapter 11.10(1)(H)(10) sunsets May 1, 2011.

~~(6) Eastern Closure:~~

~~Western boundary: Beginning at Western Head thence due south 180° magnetic to the three-mile limit.~~

~~Eastern boundary: The United States/Canada Border to the 3-mile limit, as identified on National Oceanographic and Atmospheric Administration nautical charts, including all of Cobscook Bay.~~

11.19 Cobscook Bay Limits and Restrictions.

1. Cobscook Bay.
 - (E) Closed area: See Chapter 11.10(1)(H)(10)

11.20(1) *No changes to text, strike (remove) chart*

Chapter 26.19 Closed Area: See Chapter 11.10(1)(H)(10) Whiting Bay and Denny's Bay Area